

#### REMARKS

The Office Action dated 07/05/2005 has been carefully reviewed.

#### **ELECTIONS/RESTRICTIONS**

The restriction requirement was made final and Claims 1-9, 35-40, 42, 47-48 as presented have been withdrawn from consideration as not reading on an elected species.

Applicant has amended Claims 35, 37, 38, 41 and 47-48 so these claims now read on the elected species shown in Figures 5A and 5B of the application. Applicant has instructed that the remaining claims of the claims mentioned in the preceding paragraph be withdrawn.

Accordingly, no further comments will be directed to this issue.

#### **DOUBLE PATENTING**

Claim 41 stands rejected under the judicially created doctrine of obviousness-type double patenting, with applicant's patent, US Patent 6,648,892 being cited in support of this rejection.

Even though applicant has amended Claim 41, applicant has included herewith a Terminal Disclaimer with respect to US Patent 6,648,892 to overcome the rejection based on obviousness-type double patenting.

Accordingly, no further comments will be directed to this issue.

**CLAIM REJECTION - 35 USC §102**

Claim 41 stands rejected under 35 USC §102(b), with the patent to Stone, US Patent 5,443,482, being cited as evidence that the invention defined in Claim 41 as previously presented is not patentable.

Claim 41, along with Claims 35, 37-39, 41, 47-48, has been amended to more particularly define the suture passages shown in Figures 5A and 5B as items 74 and 90. Newly-added Claims 49-54 also define these suture passages.

The claims define the suture passages as being oriented so that at least one portion of each passage lies above a second portion of the passage so the passages are oriented to extend upwards from adjacent to the surface of a bone in which the device is anchored to a level above the level of the one portion. The suture passages are also defined as extending in a manner such that an extension of a suture passage will not intersect the long axis of the threaded body. Other claims define the location of the suture passages as being radially spaced apart from the long axis of the threaded body.

The Stone patent has eyelets (18) that are each oriented at a right angle with respect to the central axis of the threaded

body. Furthermore, the axis of each eyelet will clearly intersect the long axis of the threaded body and is not oriented to have one portion closer to the patient's bone than a second portion. Furthermore, the eyelets of Stone are not arranged to be radially spaced apart from the long axis of the threaded body.

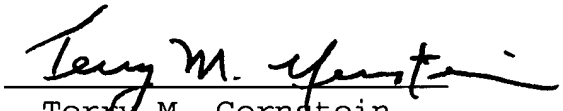
It will be more difficult to thread a suture through the eyelets of Stone than through the suture passages defined in applicant's claims. Thus, the structure that is defined in applicant's claims is not shown or suggested in the Stone disclosure and provides advantages to applicant's claimed device as compared to the device disclosed by Stone.

Certainly, the anchors now defined in the claims presented herein are not anticipated by the disclosure of Stone as required by 35 USC §102, and applicant also believes that the claims presented herein are not rendered unpatentable by Stone under the requirements of 35 USC §103.

Therefore, it is believed that the claims as now presented patentably define over the prior art, including Stone, and should be allowed.

In view of the foregoing, it is believed that this application is now in condition for allowance. Accordingly, review and allowance are requested.

Respectfully submitted,

  
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